

108TH CONGRESS
1ST SESSION

H. R. 2257

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant Irrigation Districts.

IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2003

Mr. REHBERG introduced the following bill; which was referred to the Committee on Resources

A BILL

To convey the Lower Yellowstone Irrigation Project, the Savage Unit of the Pick-Sloan Missouri Basin Program, and the Intake Irrigation Project to the appurtenant Irrigation Districts.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Lower Yellowstone
5 Reclamation Projects Conveyance Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) DIVERSION WORKS.—The term “diversion
2 works” means the land in the N¹/₂ NW¹/₄ Sec. 36,
3 T.18N., R.56E. P. M., Montana, and the diversion
4 dam structure, canal headworks structure, and first
5 section of the main canal, all contained therein.

6 (2) INTAKE IRRIGATION DISTRICT.—The term
7 “Intake Irrigation District” means the Irrigation
8 District by that name that is organized under the
9 laws of the State of Montana and operates the In-
10 take Project.

11 (3) INTAKE PROJECT.—The term “Intake
12 Project” means the Federal irrigation development
13 operated by the Intake Irrigation District and au-
14 thorized under the Act of August 11, 1939 (chapter
15 717; 53 Stat. 1418).

16 (4) IRRIGATION DISTRICTS.—The term “irriga-
17 tion districts” means—

18 (A) the Intake Irrigation District;

19 (B) the Lower Yellowstone Irrigation Dis-
20 trict No. 1;

21 (C) the Lower Yellowstone Irrigation Dis-
22 trict No. 2; and

23 (D) the Savage Irrigation District.

24 (5) LOWER YELLOWSTONE IRRIGATION DIS-
25 TRICT NO. 1.—The term “Lower Yellowstone Irriga-

tion District No. 1” means the irrigation district by that name that is organized under the laws of the State of Montana and operates the part of the Lower Yellowstone Irrigation Project located in the State of Montana.

(6) LOWER YELLOWSTONE IRRIGATION DISTRICT NO. 2.—The term “Lower Yellowstone Irrigation District No. 2” means the irrigation district by that name that is organized under the laws of the State of North Dakota and operates the part of the Lower Yellowstone Irrigation Project located in the State of North Dakota.

(7) LOWER YELLOWSTONE IRRIGATION PROJECT.—The term “Lower Yellowstone Irrigation Project” means the Federal irrigation development operated by Lower Yellowstone Irrigation District No. 1 and Lower Yellowstone Irrigation District No. 2 and authorized by the Act of June 17, 1902 (chapter 1093; 32 Stat. 388).

(8) MEMORANDUM OF UNDERSTANDING.—The term “Memorandum of Understanding” means the memorandum of understanding dated November 16, 1999, and any subsequent replacements or amendments between the Districts and the Montana Area Office, Great Plains Region, Bureau of Reclamation,

1 for the purpose of defining certain principles by
 2 which the title to the projects will be transferred
 3 from the United States to the districts.

4 (9) PICK-SLOAN MISSOURI BASIN PROGRAM.—
 5 The term “Pick-Sloan Missouri Basin Program”
 6 means the comprehensive Federal program for mul-
 7 tipurpose benefits within the Missouri River Basin
 8 including irrigation authorized by section 9 of the
 9 Act of December 22, 1944, commonly known as the
 10 “Flood Control Act of 1944” (chapter 665; 58 Stat.
 11 891).

12 (10) PICK-SLOAN MISSOURI BASIN PROGRAM
 13 PROJECT USE POWER.—The term “Pick-Sloan Mis-
 14 souri Basin Program Project Use Power” means
 15 power available for establishing and maintaining the
 16 irrigation developments of the Pick-Sloan Missouri
 17 Basin Program.

18 (11) PROJECTS.—The term “projects” means—

19 (A) the Lower Yellowstone Irrigation
 20 Project;

21 (B) the Intake Project; and

22 (C) the Savage Unit.

23 (12) SAVAGE IRRIGATION DISTRICT.—The term
 24 “Savage Irrigation District” means the irrigation
 25 district by that name that is organized under the

1 laws of the State of Montana and operates the Sav-
2 age Unit.

3 (13) SAVAGE UNIT.—The term “Savage Unit”
4 means the Savage Unit of the Pick-Sloan Missouri
5 Basin Program.

6 (14) SECRETARY.—The term “Secretary”
7 means the Secretary of the Interior.

8 **SEC. 3. CONVEYANCE OF PROJECTS.**

9 (a) CONVEYANCES.—

10 (1) IN GENERAL.—The Secretary shall, as soon
11 as practicable, convey the projects, including all
12 works, facilities, and lands of the projects, to the ir-
13 rigation districts in accordance with all applicable
14 laws and pursuant to the terms of the memorandum
15 of understanding.

16 (2) TWO STAGES.—The conveyance shall take
17 place in two stages. The first stage shall include all
18 conveyances under this Act except diversion works.
19 The second stage shall consist of all conveyances
20 under this Act of the diversion works.

21 (3) LANDS.—

22 (A) IN GENERAL.—All lands, easements,
23 and rights-of-way the United States possess
24 that are conveyed by the Secretary to the re-
25 spective irrigation districts under this Act shall

1 be conveyed by quitclaim deed. All such convey-
2 ances are subject to permits, licenses, leases,
3 rights-of-use, or right-of-way of record out-
4 standing held by third parties on, over, or
5 across such lands, easements, and rights-of-
6 way.

7 (B) MINERAL RIGHTS.—All conveyances of
8 lands under this Act shall be subject to—

9 (i) a reservation by the United States
10 of all minerals of any nature whatsoever,
11 excluding sand and gravel; and

12 (ii) oil, gas, and other mineral rights
13 reserved of record before the date of con-
14 veyance by or in favor of third parties.

15 (4) WATER RIGHTS.—The Secretary shall con-
16 vey to the respective irrigation districts in accord-
17 ance with and subject to the law of the State of
18 Montana, all natural flow, wastewater, seepage, re-
19 turn flow, domestic water, stock water, and ground-
20 water rights held in part or wholly in the name of
21 the United States that are used to serve the lands
22 within the irrigation districts.

23 (5) COSTS.—

24 (A) RECLAMATION WITHDRAWN LANDS.—

25 The irrigation districts shall purchase Reclama-

tion Withdrawn lands that are identified in the Memorandum of Understanding, for their value in providing operation and maintenance benefits to the irrigation districts.

(B) SAVAGE UNIT REPAYMENT OBLIGATIONS.—

(i) SAVAGE IRRIGATION DISTRICT.—

As a condition of any conveyance of Reclamation Withdrawn lands under subparagraph (A), the Secretary shall require the Savage Irrigation District to pay to the Secretary an amount equal to the present value of the remaining water supply repayment obligation of such district. Payment of such amount by the district shall be treated as full payment under Contract Number I1r-1525, as amended and as extended by Contract No. 9-07-60-W0770.

(ii) PICK-SLOAN MISSOURI BASIN PROGRAM CONSTRUCTION OBLIGATION.—As a condition of any conveyance of Reclamation Withdrawn lands under subparagraph (A), the Secretary shall require payment from the Pick-Sloan Missouri Basin Program (Eastern Division) power customers

1 \$94,727. This payment shall be out of the
2 receipts from the sale of power from the
3 Pick-Sloan Missouri Basin Program (East-
4 ern Division) collected by the Western
5 Area Power Administration and deposited
6 into the Reclamation fund of the Treasury
7 in fiscal year 2003. This payment shall be
8 treated as full and complete repayment by
9 the power customers of the construction
10 aid-to-irrigation associated with the facili-
11 ties of the Savage Unit.

12 (b) REVOCATION OF RECLAMATION WITHDRAWALS
13 AND ORDERS.—

14 (1) The Reclamation withdrawal established by
15 Public Land Order 4711 dated October 6, 1969, for
16 the Lower Yellowstone Irrigation Project in lots 1
17 and 2, Section 3, T.23N., R. 59 E., is hereby re-
18 voked in its entirety.

19 (2) The Secretarial Order of March 22, 1906,
20 which was issued for irrigation works on/in lots 3
21 and 4, Section 2, T. 23N., R. 59E., and the Secre-
22 tarial Order of August 8, 1905, which was issued for
23 irrigation works in Section 2, T. 17 N., R. 56 E.
24 and Section 6, T. 17 N., R. 57 E., are hereby re-
25 voked in their entirety.

(3) The Secretarial Orders of August 24, 1903, and July 27, 1908, which were issued in connection with the Lower Yellowstone Irrigation Project are revoked insofar as they affect the following lands:

(A) Lot 9 of Sec. 2 and lot 2 of Sec. 30, T.18N., R.57E.; lot 3 of Sec. 4, T.19N., R.58E.; lots 2 and 3 and 6 and 7 of Sec. 12, T.21N., R.58E.; SW $\frac{1}{4}$ NW $\frac{1}{4}$ of Sec. 26, T.22N., R.58E.; lots 1 and 4 and 7 and NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Sec. 20, T.22N., R.59E.; SE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 13, T.23N., R.59E.; and lot 2 of Sec. 18, T.24N., R.60E.; all in the Principal Meridian, Montana.

(B) Lot 8 of Sec. 2 and lot 1 and lot 2 and lot 3 and NE $\frac{1}{4}$ NE $\frac{1}{4}$ of Sec. 10 and lot 2 of Sec. 11 and lot 6 of Sec. 18 and lot 3 of Sec. 35, T.151N., R.104W.; and lot 7 of Sec. 28, T.152N., R.104W.; all in the Fifth Principal Meridian, North Dakota.

SEC. 4. REPORT.

If any conveyance under this Act has not occurred within the 2-year period beginning on the date of the enactment of this Act in the case of a conveyance required to be in the first stage under section 3(a)(2), or within the 5-year period beginning on the date of the enactment

1 of this Act in the case of a conveyance required to be in
2 the second stage under section 3(a)(2), the Secretary shall
3 submit to the Committee on Resources of the House of
4 Representatives and the Committee on Energy and Re-
5 sources of the Senate, by not later than 60 days after the
6 end of that period, a status report on the status of the
7 conveyance and the anticipated completion date of the con-
8 veyance.

9 **SEC. 5. RECREATION MANAGEMENT.**

10 As a condition of any conveyance of lands under sec-
11 tion 3, the Secretary shall require that Lower Yellowstone
12 Irrigation District No. 1 and Lower Yellowstone Irrigation
13 District No. 2 convey a perpetual conservation easement
14 to the State of Montana, at no cost to the State, for the
15 purposes of protecting, preserving, and enhancing the con-
16 servation values and permitting recreation on Federal
17 lands to be conveyed under this Act.

18 **SEC. 6. PROJECT PUMPING POWER.**

19 The Secretary—

20 (1) shall sustain the irrigation developments es-
21 tablished by the Lower Yellowstone irrigation
22 project, the Intake Project, and the Savage Unit as
23 components of the irrigation plan under the Pick-
24 Sloan Missouri River Basin Program; and

1 (2) shall continue to provide the irrigation dis-
2 tricts with Pick-Sloan Missouri River Basin Project
3 Use Power at the irrigation districts' pumping
4 plants, except that—

5 (A) the rate shall be at the preference
6 power rate; and

7 (B) there shall be no ability-to-pay adjust-
8 ment with respect to such power.

9 **SEC. 7. YELLOWSTONE RIVER FISHERIES PROTECTION.**

10 (a) IN GENERAL.—The Secretary, prior to the con-
11 veyance of title to the diversion works under this Act and
12 in cooperation with the irrigation districts, shall provide
13 fish protection devices—

14 (1) to prevent juvenile and adult fish from en-
15 tering the main canal of the Lower Yellowstone Irri-
16 gation Project; and

17 (2) to allow bottom dwelling fish species to mi-
18 grate above the Project's intake diversion dam.

19 (b) PARTICIPATION.—The Secretary and the Irriga-
20 tion Districts shall work cooperatively in planning, engi-
21 neering, and constructing the fish protection devices.

22 (c) CONSTRUCTION SCHEDULE.—Construction of the
23 fish protection devices shall be completed within 2 years
24 after the date of enactment of this Act.

1 (d) MONITORING.—The Secretary, acting through
2 the Commissioner of the Bureau of Reclamation and the
3 Director of the United States Fish and Wildlife Service,
4 and prior to the conveyance of title to the diversion works
5 under this Act, shall establish and implement a monitoring
6 plan to measure the effectiveness of the fish protection de-
7 vices for a minimum period of 2 years after construction
8 of the devices is completed.

9 (e) MODIFICATIONS.—The Secretary of the Interior,
10 prior to the conveyance of title to the diversion works
11 under this Act, shall be responsible for modifying the de-
12 vices as necessary to ensure proper functioning of the de-
13 vices. All modifications shall be completed within 3 years
14 after the devices were initially constructed.

15 (f) YELLOWSTONE RIVER FISHERIES PROTECTION
16 DEVICES COSTS.—The cost incurred in planning, engi-
17 neering, constructing, monitoring, and modifying the fish
18 protection devices is deemed to be nonreimbursable.

19 (g) OPERATION, MAINTENANCE AND REPLACEMENTS
20 RESPONSIBILITY.—Following completion of the construc-
21 tion period and the 2-year monitoring and modifications
22 required under this section, the irrigation districts shall
23 operate, maintain, and replace the fisheries protection de-
24 vices in a manner to ensure proper functioning.

1 **SEC. 8. RELATIONSHIP WITH OTHER LAWS AND FUTURE**
2 **BENEFITS.**

3 Upon conveyance of the projects under this Act, the
4 irrigation districts shall not be subject to the reclamation
5 laws or entitled to receive any reclamation benefits under
6 those laws except as provided in section 6.

7 **SEC. 9. LIABILITY.**

8 Effective on the date of conveyance of any of the
9 projects under this Act, the United States shall not be
10 liable under any State or Federal law for damages of any
11 kind arising out of any act, omission, or occurrence relat-
12 ing to the project, except for damages caused by acts of
13 negligence committed by the United States or by its em-
14 ployees, agents, or contractors prior to the date of this
15 conveyance. Nothing in this section shall be considered to
16 increase the liability of the United States beyond that cur-
17 rently provided in chapter 171 of title 28, United States
18 Code, popularly known as the Federal Tort Act.

19 **SEC. 10. COMPLIANCE WITH LAWS.**

20 As a condition of any conveyance under section 3, the
21 Secretary shall, by no later than the date on which the
22 conveyance occurs, complete appropriate analyses of the
23 conveyance in compliance with the requirements of the
24 National Environmental Policy Act of 1969 (42 U.S.C.

- 1 4321 et seq.), the Endangered Species Act of 1973 (16
- 2 U.S.C. 1531 et seq.), and other applicable laws.

